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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

2206.64630

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on December 29, 2005

Signature

Typed or printed name Patrick G. Burns

Application Number

09/855,989

Filed

May 15, 2001

First Named Inventor

Edward D. Brill

Art Unit

3724

Examiner

Prone, Jason D.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)☒ attorney or agent of record. 29,367
Registration number☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

Signature

Patrick G. Burns

Typed or printed name

(312) 360-0080

Telephone number

December 29, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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2206.64630

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Edward D. Brill
Serial No.: 09/855,989
Conf. No.: 9366
Filed: 05/15/2001
For: VIBRATOR MOTOR
Art Unit: 3724
Examiner: Jason D. Prone

I hereby certify that this paper is being deposited with the United States Postal Service as FIRST-CLASS mail in an envelope addressed to: Commissioner for Patents, Mail Stop Amendment, P.O. Box 1450, Alexandria, VA 22313-1450, on this date.

29 Dec 05
Date Registration No. 29,367
Attorney for Applicant(s)

REASONS FOR PRE-APPEAL REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

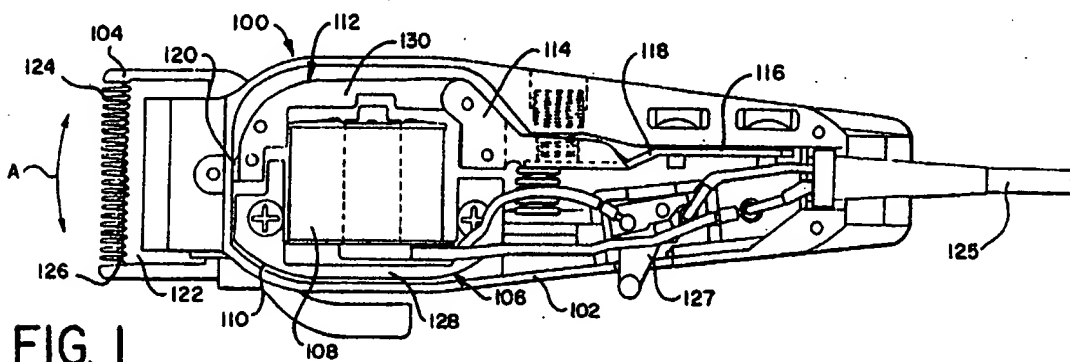
The pending claims of the present application stand rejected on the basis of Pfenning U.S.P.N. 3,735,297, in combination with various other references. Applicants request review of these rejections because (1) Pfenning is not analogous art, and (2) there is no motivation or suggestion to combine Pfenning with the other cited reference.

A June 5, 2003 rejection based in part on Pfenning was withdrawn in a March 17, 2004 office action. Pfenning was not used in an August 6, 2004 office action, a January 25, 2005 office action, or a June 3, 2005 office action, but was brought back in the most recent rejection, mailed September 29, 2005. For these reasons, applicants feel that pre-appeal review is appropriate in this case.

As successfully argued in Amendment B (mailed September 5, 2003), Pfenning is not analogous art because it describes a relay, not a vibrator motor. As seen in Section 2141.01(a) of the M.P.E.P., a reference must either be in the field of applicant's endeavor, or if not, then be reasonably pertinent to the particular problems with which the inventor was concerned. The Pfenning reference does not satisfy either criteria in this case.

A relay is not in the field of a vibrator motor. A relay is not a motor because a relay does not drive a workload. It merely makes and breaks electrical contacts. In addition, a relay does not operate continuously like a motor, and it only operates in response to command signals. In contrast, a motor operates continuously whenever power is applied. Moreover, vibrator motors are classified in U.S. 310 and relays are classified in U.S. 335. For these reasons, Pfenning is not in the field of endeavor of the present invention.

The present invention eliminated the tail spring used in conventional vibrator motors, such as the tail spring 118 in U.S. Patent No. 5,787,587.



The tail spring in a vibrator motor provides mechanical resonance as the motor continuously vibrates. Pfenning does not address or attempt to solve the problem of eliminating the tail spring in a vibrator motor, and is not pertinent to that problem. After all, relays do not vibrate continuously, and do not use mechanically resonating tail springs. Accordingly, withdrawal of Pfenning is respectfully requested.

Claim 16 stands rejected under § 103 on the basis of Pfenning and Soultanian. The previous § 102 rejection (mailed June 3, 2005) based on Soultanian was overcome because Soultanian does not disclose (or suggest) the hinge defined in the present claims, which the examiner concedes (September 29, 2005 office action, page 3). Without Pfenning, the present § 103 rejection must fall.

Even with Pfenning, the rejection fails because there is no motivation or suggestion to combine the references. There is no suggestion that the tail bracket in Soultanian could be eliminated by adapting structure from the relay described in Pfenning.

For these reasons, applicants respectfully request allowance.

Respectfully submitted,

GREER, BURNS & CRAIN, LTD.

By



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